

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOMOZANE TERASAWA,
YASUHIRO LINO, YOSUKE MATSUSHIMA,
and HIROHITO NISHIMURA

Appeal No. 1999-2677
Application 08/878,769

ON BRIEF

Before MCCANDLISH, Senior Administrative Patent Judge, STAAB,
and MCQUADE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Tomozane Terasawa et al. appeal from the final rejection of claims 3, 22, 23 and 30.¹ Claims 4, 20, 21 and 24 through 29, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

¹ Claim 23 has been amended subsequent to final rejection.

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THE INVENTION

The subject matter on appeal relates to an air bag apparatus which is defined in representative claim 30 as follows:

30. An air bag apparatus for protecting a driver of a vehicle, said air bag apparatus comprising: an air bag, a base plate for mounting thereon a gas generator for inflating said air bag, and a pad cover secured to said base plate for accommodating said air bag and said gas generator therein, wherein a portion of said base plate is a unitary component having a portion configured by turning in a downward direction to form a side inner face portion and turning outwardly to form a bottom portion contiguous to the side inner face portion, and a lower end of a terminal portion of the pad cover having a terminal flange thereon is disposed along the side inner face portion and the bottom portion, and the bottom portion turned back upward and inward to enclose the terminal portion flange of said pad cover and form a side outer face portion so that the terminal portion of the pad cover is held and retained between to the side outer face portion and the side inner face portion, thereby forming a caulking portion for said terminal flange.

THE PRIOR ART

The references relied upon by the examiner as evidence of obviousness are:

Hesse (British Patent Document)	2,037,204	Jul. 9, 1980
Takada ²	1-160756	Jun. 23, 1989

² An English language translation of this reference, prepared on behalf of the U.S. Patent and Trademark Office, is appended hereto.

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(Japanese Patent Document)

THE REJECTION

Claims 3, 22, 23 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Japanese reference in view of the British reference.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 31 and 34) and to the examiner's final rejection and answer (Paper Nos. 28 and 33) for the respective positions of the appellants and the examiner with regard to the merits of this rejection.

DISCUSSION

The Japanese reference discloses an air bag apparatus (see Figure 1) comprising an air bag cover 1, a retainer 4, an inflator 6 and an air bag 8. The retainer constitutes a base plate and includes an upstanding side wall 5 which interlocks with folded portions 3 on tongue pieces 2 depending from the cover (see Figure 2) to keep the cover from separating from the retainer upon inflation of the air bag. As conceded by the examiner (see page 2 in the final rejection), the

retainer/base plate 4 does not meet the limitations in independent claim 30 relating to the base plate side inner face portion.

The British reference discloses "a crimped joint between a first part having a flange and a second part having a deformable edge zone" (page 1, lines 6 through 8). The second part, exemplified as the pipe-mounting base plate 2 of a heat exchanger, includes a rectangular groove-shaped cross-section for receiving a seal 3 and the flange 4 of the first part. This groove-shaped cross-section comprises an inner face 13, a lower face 14 for accommodating the seal and an outer face 15 having portions 7 adapted to be deformed or crimped over the flange 4.

In rejecting claim 30 under 35 U.S.C. § 103(a), the examiner has determined that it would have been obvious to one of ordinary skill in the art at the time the invention was made "to modify [the Japanese air bag apparatus] to include a side inner face as taught by [the British reference] in order to form the area to capture the flange in an alternative and structurally equivalent manner" (final rejection, pages 2 and

3). As so modified, the Japanese air bag apparatus presumably would meet all of the limitations in the claim.

Even if it is assumed for the sake of argument, however, that the British reference is analogous art (the appellants submit that it is not), the combined teachings of the two references would not have suggested the modification of the Japanese air bag apparatus proposed by the examiner. To begin with, the examiner has failed to advance any evidence to support

the proposition that the joint structures at issue in the two references are structural equivalents. Moreover, even if such a showing had been made, it would not be dispositive since the mere existence of functional or mechanical equivalence does not establish obviousness (see In re Scott, 323 F.2d 1016, 1019, 139 USPQ 297, 299 (CCPA 1963)). Although the inner face 13 of the British base plate 2 effectively constitutes a side inner face portion, the basic purpose of this element is to secure the associated seal 3 and flange 4 in the proper position. The Japanese joint has no such seal, and the flange component thereof (the folded part 3 of each tongue piece 2), by virtue of its interlocking relationship with the retainer

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side wall 5 and the pressure exerted by the air bag 8 when inflated, has no apparent need for further securement. In this light, it is evident that the proposed combination of the two references stems from an impermissible hindsight reconstruction of the appellants' invention wherein the claims have been used as a template to selectively combine disparate elements in the prior art.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 30, or of claims 3, 22 and 23 which

depend therefrom, as being unpatentable over the Japanese reference in view of the British reference.

The decision of the examiner is reversed.

REVERSED

HARRISON E. MCCANDLISH)
Senior Administrative Patent Judge)

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LAWRENCE J. STAAB
Administrative Patent Judge

JOHN P. MCQUADE
Administrative Patent Judge

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